Commission spoke of the "dynamic nature of the CMRS marketplace."[69]

Commenters widely agreed that new competitors for wireless service would serve to increase the already high level of competition in the industry. SWB, for example, states that broadband PCS providers will more than triple the number of wireless carriers in every market. SWB also notes that in the United Kingdom, cellular prices have decreased by 20 to 33% since PCS carriers began providing service.[70] Vanguard Cellular Systems, Inc. ("Vanguard"), states that wireless competitors are "emerging on a daily basis" and submits that Nextel, a wide-area SMR provider, has plans to serve 70% of the United States population within two years.[71] Even AT&T, an IXC, believes that the wireless market will become "intensely competitive."[72] TDS states, as did GTE, that in an industry where competition is expected to increase "exponentially," end users may freely elect to subscribe to any number of carriers who will provide "wide choices" of long distance service arrangements.[73]

E. The Original Rationale for Imposition of Equal Access Is Inapplicable in the Cellular

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[69] AT&T/McCaw Order at 26, ¶¶ 40, 41.

[70] SWB at 21-22 (citing Affidavit of Professor Hausman).

[71] Vanguard at 7.

[72] AT&T at 8.

[73] TDS at 10; GTE at 28; see also New Par at 3, 4-5.

GTE explained in its initial comments that the original rationale for imposing Equal Access is inapplicable to independent cellular carriers. Cellular carriers neither control bottleneck facilities nor prevent end users from accessing IXCs or the PSTN.[74] A significant number of commenters agreed that cellular carriers do not control bottleneck facilities,[75] and that this fact undermined the NPRM/NOI's tentative conclusion to impose Equal Access on independent cellular carriers.[76]

New Par, for example, agrees with GTE that no cellular carrier controls bottleneck facilities, and that consequently, Equal Access is unnecessary.[77] ALLTEL states that the concept that the cellular market is a monopoly bottleneck could not be "further from the truth."[78] Palmer Communications Incorporated ("Palmer") agrees with Commissioner Barrett, as does GTE, that the bottleneck

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[74] GTE at 22. In the AT&T/McCaw Order, the Commission found that the MFJ and the Commission's rules were intended to allow customers to choose among available IXCs. AT&T/McCaw Order at 39, ¶ 68.

[75] AirTouch at 6-7; ALLTEL at 3, 4, 7; AMTA at 5; Century at 12; CTIA at 3-4; McCaw at 6 (see also Owen Declaration at 2); New Par at 5; Rural at 5; Saco at 2-3; SWB at 16, 20-21; Triad at 3.

[76] AirTouch at 6-7; ALLTEL at 3, 4, 7; AMTA at 6; Century at 12; CTIA at 3-4; New Par at 5; Nextel at 5-6; Rural at 5; Saco at 2-3; SWB at 19-21; Triad at 3.

[77] New Par at 4-5.

[78] ALLTEL at 7.

rationale for imposing Equal Access "is not apparent" in the cellular industry.[79]

A distinct minority of commenters contend that cellular systems constitute bottleneck facilities.[80] LDDS, for example, reaches that conclusion based upon an erroneous assumption that cellular end users can only be accessed via the cellular system.[81] In fact, as discussed in Part II, Section A, Subsection 1 supra, cellular end users can easily access IXCs via alternative dialing plans.

Cellular carriers' facilities cannot be bottleneck facilities as there are two systems per market and cellular subscribers have the ability to select IXCs via dialing plans.[82] Owen, in his economic analysis, concludes that cellular facilities are not bottleneck facilities, stating that "new systems do not need to interconnect with cellular networks . . . in order to enter the mobile communications

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[79] Palmer at 4 (citing Separate Statement of Commissioner Andrew C. Barrett, filed with the NPRM/NOI); see also Rural at 5.

[80] Comments of Cellular Service, Inc. and ComTech, Inc. ("CSI/ComTech") at 7; Comments of the Public Utilities Commission of the State of California ("CPUC") at 4; LDDS at 8; Comments of the National Cellular Resellers Association ("NCRA") at 2. ComTech, CSI, and NCRA represent the interests of resellers; their claims that cellular carriers control bottlenecks are incorrect, and are put forth out of self-interest. See Part III, Section C infra for further discussion.

[81] LDDS at 8.

[82] GTE at 22-23.

market successfully."[83] Judge Greene recently concurred in part, stating that cellular carriers do not control essential facilities, and finding that non-wireline cellular facilities are not bottlenecks.[84] The Commission recently stated that "the BOCs' historical, ubiquitous wireline exchange bottleneck" was not "perfectly analogous to the local cellular service market."[85] Thus, the record amply bears out the Commission's belief that cellular facilities may not constitute bottleneck facilities.[86]

F. Equal Access Cannot Be Justified under a Benefit-Cost Analysis

1. The alleged benefits of Equal Access are illusory.

As discussed in GTE's initial comments, the magnitude of any perceived benefits from Equal Access would be quite limited. The universe of cellular calls on which Equal Access would be provided is limited by two factors: 1) only a small percentage of cellular traffic would be subject to an Equal Access requirement; and 2) Equal Access would be technically infeasible for a significant number of calls. GTE, in its comments, stated that less than 10% of its cellular traffic

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[83] Owen Declaration at 2.

[84] See United States v. Western Electric Co., Inc., et al., Civil Action No. 82-0192 (HHG), slip op. at 17-18 (D.D.C. August 25, 1994).

[85] AT&T/McCaw Order at 24, ¶ 39.

[86] NPRM/NOI at 42, ¶ 99.

involves an IXC.[87] At least one IXC, AT&T, concurs, and in fact, concludes that "only 3-5% of cellular calls are interexchange calls, and [] interexchange service costs are an "equally minute percentage" of costs that cellular carriers and customers incur in providing or using cellular service."[88] As the universe of cellular calls to which Equal Access could be afforded shrinks to the inconsequential, so do the potential benefits which could result from the implementation of Equal Access. As stated by Vanguard as well as GTE, the supposed benefits of Equal Access are illusory.[89] Equal Access would not expand the ability for end users to access networks[90] because end users currently have the ability to access the PSTN and the IXC of their choice, through alternative dialing plans such as 800 and 950 numbers. Nor would Equal Access spur the innovation of IXC services.[91] Because dialing plans provide "ubiquitous"

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[87] GTE at 15.

[88] AT&T/McCaw Order at 8.

[89] See Vanguard at 15; GTE at 15. See also Comcast at 32-33; PTC at 5.

[90] See Vanguard at 16.

[91] GTE notes that although MCI signalled great interest in cellular Equal Access by initiating this rulemaking, it has not, according to SWB, attempted to promote its services at all in SWB markets, despite the current provision of Equal Access by SWB. SWB at 30, 49. MCI's apparent decision not to provide IXC service in SWB markets seriously calls into question the claims of IXCs that Equal Access is essential for the development of new services.

access to IXCs,[92] there appears to be no barrier to cellular subscribers accessing today any innovative service introduced by an IXC.[93] As GTE discussed in its comments, Equal Access would not ensure lower long distance rates.[94] SWB agrees, and declares that IXCs are committing price discrimination, allowing large corporations to negotiate huge discounts while forcing the average individual to pay high long distance prices.[95] NYNEX states that in ten years of offering Equal Access, IXCs have not generally offered NYNEX cellular customers calling plans aimed for cellular use, nor have they offered reduced rate packages for combined wireless and wireline service. NYNEX states, and GTE agrees, that there is no reason to believe that IXCs will suddenly act differently if Equal Access were mandated for independent cellular carriers.[96] The record conclusively establishes that regardless of what IXCs claim, the notion that lower long distance prices will result from Equal Access is unfounded.[97]

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[92] CTIA at 10.

[93] See, e.g., AT&T at 7, n.11; MCI at 8.

[94] GTE at 16; see also AirTouch at 9; Century at 8-9; NYNEX at 4-5; Palmer at 4; PTC at 3-4; SNET at 7-8; SWB at 26; Vanguard at 15-16.

[95] SWB at 26-28.

[96] NYNEX at 4-5.

[97] The IXCs largely reiterate assertions of Equal Access benefits without providing adequate documentation or quantification. See e.g., Wiltel at 10.

As a number of commenters point out, the sole beneficiaries of Equal Access would be the IXCs.[98]

2. Equal Access currently costs consumers $900 million per year.

Professor Jerry A. Hausman, in a study submitted with the comments of SWB, found that the provision of Equal Access by RBOC cellular carriers currently costs consumers approximately $900 million every year.[99] Professor Hausman determined that this was due to anticompetitive pricing by IXCs, and stated that Equal Access would give IXCs the opportunity to "engage in anticompetitive actions against all cellular customers and lead to higher long distance prices for all cellular customers."[100] No benefit from Equal Access could possibly outweigh such an immense cost.

3. The costs of implementing Equal Access are substantial, and may increase the price of cellular service for consumers.

As pointed out by Palmer, as well as GTE, substantial costs of implementing Equal Access are likely to increase cellular service prices for consumers[101] as the costs of

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[98] Americell at 4; BellSouth at 33; Comcast at 32; Dakota at 4; First Cellular at 4; GTE at 11, n.9; Lake Huron at 4; NYNEX at 3; Palmer at 8; Sagir at 4; SWB at 24-29; Vanguard at 9; Western at 1-2.

[99] Affidavit of Professor Hausman at 3, 20 (filed with the Comments of SWB).

[100] Id. at 7.

[101] Palmer at 4; GTE at 17; see also ALLTEL at 5; Americell at 3; Azeez at 3; Dakota at 3; First Cellular at 3; Lake Huron at 3; New Par at 10-11; Point at 2; Vanguard at 16 (citing Statement of Professor Jerry A. Hausman at 42,

implementing Equal Access to GTE and to other independent cellular carriers would be substantial.[102] The cost to GTE alone is estimated at $23 million.[103] Commenters representing small cellular and CMRS carriers stated that the expense of implementing Equal Access would endanger the continued operation of their systems.[104] AirTouch, which has had experience implementing Equal Access from its past association with an RBOC, agrees that the reconfiguration of systems, switch software modifications, billing arrangements, alteration of customer order entry software, customer service training, and balloting of consumers necessitates significant expenditures.[105] As pointed out by Horizon, these costs "will divert capital from productive expansion and upgrade plans."[106] Thus, there is substantial agreement that even if

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attached to Comments of Vanguard). Professor Hausman states that because the costs of Equal Access may drive the price of cellular service up, Equal Access would actually be an impediment to end user access to networks. Id.

[102] AirTouch at 17; ALLTEL at 5; Americell at 3; Century at 4-7; Comcast at 32-33; Dakota at 3; First Cellular at 3; Horizon at 4; Lake Huron at 3; NABER at 6-7; New Par at 10-11; Palmer at 4-5; Point at 2; PTC at 4-5; Rural at 6-7; Saco at 3-4; Sagir at 3; TDS at 3-7; Triad at 6-7; Vanguard at 10-11.

[103] GTE at 17.

[104] See, e.g., Horizon at 4; Miscellco at 5-6; Palmer at 5; Saco at 3-5; Triad at 6-7.

[105] AirTouch at 17; see also Century at 4-5.

[106] Horizon at 4; see also ALLTEL at 5-6; Century at 9-10; Vanguard at 15.

some benefit could result from Equal Access, it would be eradicated by the costs of implementation.

4. The loss of wide toll-free calling areas would adversely affect the public.

Wide cellular toll-free calling areas currently provide substantial savings in toll charges to the public,[107] and there is considerable consensus among commenters that their loss would be harmful to cellular consumers.[108] Wide toll-free calling areas were created and have been expanded due to public demand,[109] and according to surveys conducted by certain cellular carriers, they are valued by cellular subscribers.[110] SWB found in a survey that its own customers, by a nearly ten to one margin, ranked "large calling area" first in importance and choice of IXCs "dead last."[111]

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[107] GTE at 11; see SWB at 38; Vanguard at 12-14. SWB states that where it was granted waivers of the MFJ to expand its service areas, the price of cellular service generally decreased. SWB also found that independent cellular carriers responded to SWB's expansion of toll-free calling areas by widening their respective wide toll-free calling areas. Id. at 39.

[108] See, e.g., AirTouch at 11; Century at 9; CTIA at 7-8; Florida at 2-3; Miscellco at 6, 8; Comments of the Organization for the Protection and Advancement of Small Telephone Companies ("OPASTCO") at 4; Comments of Small Market Cellular Operators ("SMC") at 3-4; SNET at 9-10; TDS at 12-13; Vanguard at 16-17.

[109] See GTE at 10; AirTouch at 12; SWB at 37.

[110] See, e.g., SWB at 33, 35; AirTouch at 4; Vanguard at 9-10.

[111] SWB at 35.

In sharp contrast to the public's demand for wide toll-free calling areas, MCI argues that "[t]he Commission should not allow current calling scopes, such as . . . cellular expansive local calling areas, to persist indefinitely."[112] Abolishing wide toll-free calling areas would serve to increase IXC traffic as previously toll-free cellular calls would have to be routed to IXCs. Cellular subscribers would have to pay additional IXC charges for calls that are currently toll-free; clearly, wide toll-free calling areas serve the public interest. As TDS and Vanguard state, the restriction or elimination of wide toll-free calling areas would serve the interests of the IXCs at the expense of cellular subscribers.[113] Independent cellular carriers and some trade associations agree with the Commission's tentative finding that the eradication of wide-area toll-free calling would not be in the public interest.[114]

5. The implementation and administration of Equal Access will require the expenditure of significant FCC resources for an indefinite period of time.

The administrative expense of regulating Equal Access would be significant and would require the long-term

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[112] MCI at 4.

[113] TDS at 12-14; Vanguard at 14; see also Horizon at 3; Miscellco at 6, 8.

[114] AirTouch at 11; Century at 9; CTIA at 8; Florida at 2-3; OPASTCO at 4; SMC at 3-4; TDS at 12-14.

commitment of substantial Commission resources.[115] The commenters who support Equal Access in this proceeding have sought to multiply the burden the Commission could expect to shoulder by asking that the Commission impose further regulations on CMRS providers.

First and foremost, restriction of service areas under Equal Access would virtually compel institution of a waiver process.[116] As noted by AirTouch, the "flood" of waiver requests from the RBOCs have greatly burdened the MFJ court.[117] Because there are only a few RBOC-affiliated cellular carriers, and numerous independent cellular carriers, that "flood" will pale in comparison to the avalanche that the Commission could expect with Equal Access.[118] Despite the evident administrative difficulties involved with a waiver system, IXCs were generally quite supportive of foisting such a hardship on the Commission.[119] However, it is alarming that at the same time that the IXCs are advocating the use of waivers, LDDS states that there are still unresolved landline

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[115] GTE at 18, n.13; see AirTouch at 12; SWB at 37-38, 45.

[116] See, e.g., AirTouch at 12.

[117] Id.

[118] AirTouch at 12; SWB at 45.

[119] See Allnet at 5; AT&T at 11, n.17; MCI at 6-7. See also McCaw at 34, n.94. The AT&T/McCaw consent decree mandates that McCaw, formerly an independent cellular carrier, provide Equal Access at LATA boundaries. McCaw at 33.

Equal Access issues, years after Equal Access was imposed on landline carriers.[120]

Second, AT&T seeks to further encumber the Commission with a request that cellular carriers file informational tariffs with the FCC once Equal Access is imposed without demonstrating the necessity of such tariffs.[121] AT&T also suggests that the Commission mandate IS-41 interconnection.[122] GTE strongly opposes such a proposal, which would only serve to hamper the flexibility and further development of cellular systems. IS-41 interconnection is constantly evolving, and to suddenly mandate it for all systems would effectively stunt the pace of its development. GTE submits that market forces alone have brought and continue to bring wide-spread development of IS-41 interconnection in an efficient manner.

G. Equal Access Cannot Be Justified on the Basis of Parity

Most RBOC cellular carriers advocate the imposition of Equal Access upon non-RBOC cellular carriers under the rubric of "parity"[123] even though some RBOCs convincingly detail in their comments that Equal Access has not lowered the price of

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[120] LDDS at 11, n.18.

[121] See AT&T at 12, n.18.

[122] AT&T at 10, n.15.

[123] See Comments of Ameritech at 1; Bell Atlantic at 4; BellSouth at 31-33; NYNEX at 6-7; Pac Bell at 3.

long distance service for their cellular subscribers[124] and has not been demanded by their cellular subscribers.[125] GTE does not believe that any concept, including parity, justifies perpetuation and extension of a policy which is contrary to the public interest.

The Commission has, in another context, recently found that parity should not be blindly followed. In the AT&T/McCaw Order, the Commission reviewed AT&T's proposal to "bundle" cellular and interexchange service and permitted the bundling even though RBOC-affiliated cellular carriers are prohibited from offering bundled services.[126] In taking its action, the Commission stated: "We can conceive of no sound basis to impose regulatory restraints upon AT&T/McCaw solely to neutralize the effects of constraints imposed on the BOCs by the MFJ court."[127]

GTE respectfully submits that the same analysis utilized by the Commission in the AT&T/McCaw Order should be followed here. The appropriate response, and one in which GTE concurs, is for the Commission to advocate the removal of the Equal Access constraints from RBOC cellular carriers.

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[124] See NYNEX at 4-5; SWB at 25-29.

[125] SWB at 31-34.

[126] AT&T/McCaw Order at 41, ¶ 74.

[127] Id.; see also id. at 20-21, ¶ 32; 22, ¶ 35; and 51, ¶ 90.

H. The Imposition of Equal Access on ATG Carriers Is Unwarranted

As GTE stated in its initial comments, Equal Access for ATG carriers is technically and economically infeasible.[128] Claircom Communications Group, L.P. ("Claircom"), the only other ATG carrier to file a comment and the only commenter to directly address ATG service, concurred with GTE's assessment of the unique nature of ATG service.[129] Claircom urges the Commission not to impose "traditional Equal Access" on ATG carriers, and suggests that at most the Commission should mandate access to IXCs through dial around plans.[130] Unlike Claircom, GTE has never blocked access to IXCs via 800 numbers, and thus Airfone ATG end users currently have the capability to access the IXC of their choice.

GTE concurs with Claircom that Equal Access could not be expected to alter the price of ATG calls by changing the price of IXC service, because the cost of the terrestrial portion of a call is minimal compared to the ATG portion.[131] GTE therefore agrees with Claircom that as ATG service is a national service and not distance-sensitive, a single rate should be charged to end users for both the terrestrial and

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[128] GTE at 29-37.

[129] Comments of Claircom Communications Group, L.P. ("Claircom") at 4.

[130] Id. at 1-2.

[131] Claircom at 7.

air-to-ground portions of ATG service.[132] However, the costs of implementing Equal Access would have the definite and detrimental effect of increasing ATG prices for the end user.[133] Thus, an Equal Access requirement for ATG carriers would not be in the public interest.

GTE must take issue with certain statements made in Claircom's comments. Claircom is incorrect in suggesting that 10XXX codes are viable in the ATG environment.[134] As GTE noted in its comments, foreign ground stations cannot support 10XXX dialing and the cost of designing and incorporating software necessary to support 10XXX dialing would be significant.[135]

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[132] Id. Further, in the AT&T/McCaw Order, the Commission found that the postalizing of rates can have public interest benefits. AT&T/McCaw Order at 42, ¶ 75.

[133] GTE at 33.

[134] See Claircom at 9.

[135] GTE at 35-37. GTE also disagrees with Claircom that commercial airlines (which unlike ATG providers, are not regulated by the Commission as common carriers) should be allowed to dictate the type of access ATG end users have to IXCs. Claircom at 1-2, 5, 6, 8, 9. While ATG carriers compete for the right to have their ATG system installed on commercial aircraft, each ATG licensee bears the responsibility of providing service to the public in accordance with the Commission's rules and in response to customer demand.

III. The Record Strongly Supports Retaining Current FCC Interconnection Policies

A. There Is No Reason to Depart from the FCC-Endorsed Policy of Negotiated Interconnection Arrangements

In its comments, GTE recounted the benefits of contractual negotiation of interconnection arrangements, explained how "most favored terms" clauses were unnecessary, and outlined the merits of not requiring the filing of interconnection contracts with the FCC.[136] Commenters are nearly unanimous in their support of good faith interconnection negotiation, and many commenters support GTE's position regarding "most favored terms" clauses and the filing of interconnection contracts at the Commission.

1. The vast majority of commenters agree that good faith negotiation for interconnection arrangements is superior to tariffed interconnection.

Contractual negotiation is superior to tariffed interconnection because it affords both cellular carriers and LECs the flexibility necessary to rapidly respond to changing interconnection needs.[137] In addition, GTE voiced its concern that tariffed interconnection would harm small carriers and new entrants.[138]

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[136] GTE at 37-45.

[137] GTE at 39; see also AirTouch at 21; Ameritech at 3; BellSouth at 5-9; Cincinnati Bell at 2; CTIA at 17-18; NYNEX at 12; Western at 7.

[138] GTE at 41.

The record shows that the majority of parties commenting agree with GTE. But what is most striking about this overwhelming support for good faith negotiations is that it is shared by parties that have quite different backgrounds and interests in interconnection. It is not often that IXCs,[139] RBOCs,[140] mid-sized LECs,[141] large cellular providers,[142] small and mid-sized cellular providers,[143] SMR licensees,[144] trade associations,[145] paging providers,[146] and new PCS entities[147] agree so uniformly on any issue. For good faith negotiations to garner such wide-spread support attests to its clear superiority to the alternative of mandatory tariffs.

The vast majority of carriers that actually engage in negotiations for LEC-CMRS interconnection firmly support the

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[139] AT&T at 12-13; RTC at 8.

[140] Ameritech at 3; Bell Atlantic at 13-14; BellSouth at 5-9; NYNEX at 11-12; Pac Bell at 12, 15; SWB at 63.

[141] Cincinnati Bell at 2; SNET at 12.

[142] AirTouch at 12; ALLTEL at 7-8; McCaw at 23; Vanguard at 21.

[143] New Par at 21-22; Western at 7.

[144] Comments of Dial Page, Inc. ("Dial Page") at 6; Comments of E.F. Johnson Company ("EFJ") at 6; Comments of Geotek Communications, Inc. ("Geotek") at 10; OneComm at 20; Comments of RAM Mobile Data USA Limited Partnership ("RMD") at 7.

[145] CTIA at 21; OPASTCO at 5; PCIA at 11; Rural at 9.

[146] Comments of Paging Network, Inc. ("PageNet") at 8-9.

[147] Comments of American Personal Communications ("APC") at 4-5.

process.[148] Thus, the Commission has heard resoundingly from the participants that the Commission's policy of good faith negotiation works well and should be retained.

2. A "most favored terms" guarantee is unnecessary for interconnection contracts between LECs and CMRS carriers.

GTE has pointed out that a "most favored terms" clause is unnecessary, particularly due to the anti-discriminatory efforts of LECs such as GTE and the safeguards of the Communications Act. Further, GTE registered its concerns that "most favored terms" clauses could spawn confusion and litigation. Other commenters agree that a "most favored terms" clause would be unwarranted and deleterious to the industry.[149] BellSouth, for example, states that "most favored terms" clauses would have "distinct disadvantages" by turning every contract into a tariff (with the incumbent lack of flexibility).[150] Rochester Telephone Corporation ("RTC")

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[148] GTE notes that Nextel's statements on this issue are inconsistent. In a letter to an administrative law judge filed in the California interconnection docket, Nextel stated that tariffs could become a "regulatory straightjacket." Letter from Nextel of 11/4/93 to Administrative Law Judge for the State of California, on file in Pacific Bell Petition to Modify Decision 90-06-025 of the Public Utilities Commission of the State of California, I.88-11-040, A.87-02-017. Now before the FCC, Nextel states that tariffs "should help expedite interconnection." Nextel at 16.

[149] GTE at 44; see also Ameritech at 3; APC at 5; Bell Atlantic at 15, n.12; BellSouth at 11; Cincinnati Bell at 3; NYNEX at 12, n.13; PCIA at 12; RTC at 9; SNET at 12-13.

[150] BellSouth at 11.

suggests that such clauses would be "counterproductive."[151] GTE concurs with NYNEX's observation that "most favored terms" clauses are unnecessary, because LECs are already obligated to provide interconnection on a non-discriminatory basis; and an injured party can file a complaint with the Commission.[152]

The commenters supporting "most favored terms" clauses[153] typically asked that the Commission mandate such provisions as an alternative to requiring tariffed LEC-CMRS interconnection.[154] However, as tariffing is not warranted,[155] an alternative to tariffing is likewise unnecessary. Other commenters claimed that "most favored terms" clauses would protect against discrimination.[156] Yet by requiring "most favored nation" clauses, the Commission would not be strengthening the existing safeguards against discrimination; instead, it would be unintentionally laying the groundwork for delays and legal costs that need not be incurred. The "most favored terms" clause is not in the public interest and should not be mandated.

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[151] RTC at 9.

[152] NYNEX at 12, n.13.

[153] Cox at 12-13; McCaw at 24; New Par at 21-22; Nextel at 16-17; OneComm at 20; Point at 6; RMD at 7-8; Rural at 9.

[154] See, e.g., Nextel at 17.

[155] See Part III, Section A, Subsection 1 supra.

[156] Cox at 12-13; McCaw at 24; New Par at 21-22; Point at 6; RMD at 7-8; Rural at 9.

3. The filing of LEC-CMRS contracts with the Commission is not necessary.

As a significant number of commenters state, a requirement that LEC-CMRS interconnection contracts be filed with the Commission is both unwarranted and costly.[157] Bell Atlantic points out that the filing of contracts would be an administrative burden "without serving any useful purpose."[158] BellSouth agrees, stating that "requiring the filing of negotiated contracts as 'contract tariffs' would add nothing of value to the existing system. It would simply interject delay and add to the LECs' cost of doing business, which would result in higher interconnection costs. This would clearly disserve the public interest."[159] SNET believes that a filing requirement would substantially reduce carriers' abilities to meet their individual customers' needs quickly and flexibly.[160] GTE agrees with these commenters, and urges the Commission not to adopt such a policy.[161]

B. Interconnection Arrangements between CMRS Providers Should Be Left to Marketplace Forces

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[157] GTE at 45; see also Bell Atlantic at 15, n.12; Cincinnati Bell at 2-3; NYNEX at 12, n.13; RTC at 9; SNET at 12-13.

[158] Bell Atlantic at 15, n.12.

[159] BellSouth at 11 (footnote omitted).

[160] SNET at 13.

[161] As GTE stated in its comments, should experience indicate a need to revisit this matter, far more cost-efficient approaches are available than requiring the Commission to assume the role of librarian for thousands of executed interconnection contracts.

GTE stated in its comments that marketplace forces, rather than regulation, should determine the manner in which interconnection is furnished among CMRS providers.[162] GTE believes that the wireless marketplace will be even more fiercely competitive and that carriers will interconnect for economic reasons as market forces dictate.[163] For these reasons, commenters ranging from cellular carriers, to RBOCs, wide-area SMR providers and an IXC are in agreement that the Commission should not impose CMRS interconnection obligations.[164]

Mandating CMRS-CMRS interconnection requirements would be premature.[165] Many wireless services are just beginning to establish themselves, and mandated CMRS interconnection would likely retard or stunt their growth.[166] Bell Atlantic suggests, as did GTE, that the best course for the Commission is to rely on marketplace forces to determine interconnection

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[162] GTE at 46.

[163] Id.

[164] Id.; see also AirTouch at 22; ALLTEL at 8-9; Ameritech at 4; AMTA at 14; AT&T at 13-14; Bell Atlantic at 15-17; BellSouth at 11-14; CTIA at 29; EFJ at 7; McCaw at 5; NABER at 9-10; New Par at 22; Nextel at 18; NYNEX at 13; OneComm at 21; RTC at 9-11; Rural at 9-10; SNET at 13-14; Vanguard at 22.

[165] See Bell Atlantic at 15-17; see also AMTA at 14; Nextel at 18; OneComm at 21.

[166] Bell Atlantic at 15-16.

among CMRS providers.[167] McCaw states that because interconnection increases demand for a carrier's services, CMRS providers will interconnect "when it is efficient for them to do so."[168]

Pacific Bell, who supports mandated CMRS-CMRS interconnection, claims that such a requirement would promote "flexibility in communications."[169] GTE strenuously disagrees that this would be the case; in fact, the contrary would almost surely occur. Because the technology of many CMRS service providers is still evolving, imposition of interconnection requirements would simply freeze technology at the current level and prevent further innovation.

Rather than prematurely imposing a CMRS-CMRS interconnection policy, the Commission should preempt state regulation of CMRS-CMRS interconnection so that the marketplace is freed to determine the most efficient methods of interconnection. The Commission has previously exercised its authority to preempt state regulation over the right to and types of LEC-CMRS interconnection.[170] It is crucial to the unfettered development of the wireless marketplace that

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[167] Bell Atlantic at 15; see also ALLTEL at 8-9; AT&T at 13-14; McCaw at 8; RTC at 10.

[168] McCaw at 8.

[169] Pac Bell at 16-17.

[170] See The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services (Declaratory Ruling), 2 F.C.C. Rcd 2910, 2912 (1987); CMRS Second Report and Order at 1497.

the Commission extend its previous preemption efforts to CMRS-CMRS interconnection.[171]

C. The FCC Should Not Adopt a New Policy to Permit Resellers to Connect to Cellular Carriers' Switches

The Commission should not mandate that cellular carriers provide resellers with interconnection to the carriers' switches.[172] Only resellers, and the CPUC, supported such a policy in the initial comments.[173] Reseller connection at the carrier's switch would not provide any benefits to the end user beyond those that are currently available, and such

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[171] In contrast to market forces, state regulation of CMRS-CMRS interconnection could produce a patchwork of conflicting interconnection policies. While this would be problematic in the current wireless environment, it could endanger the growth of wireless communications in the future. Although cellular systems' service areas can cross state boundaries, PCS systems will leap across multiple state boundaries. For example, a Southern California PCS MTA licensee's market will encompass Arizona, Nevada, and four California MSAs. Given the increasing interstate scope of wireless telephony, GTE concurs with the Commission's finding that it has the requisite authority to preempt state regulation of CMRS-CMRS interconnection. NPRM/NOI at 61, ¶ 143. In a related matter, GTE notes that the rates for interconnection fall squarely within the Commission's preemption powers granted by Congress and codified in Section 332 of the Communications Act of 1934. Thus, states that declined to file petitions to retain jurisdiction by August 10, 1994, no longer have the authority to regulate any manner of cellular rates. Any remaining rate issues are contained in the Petitions of the eight states which filed to retain jurisdiction over rates.

[172] GTE at 46; see also AirTouch at 23-24; BellSouth at 18-19; Comcast at 17, 18; McCaw at 14-17; Rural at 10-11.

[173] CPUC at 4; ComTech at 2; NCRA at 2.

connection would more likely drive up the costs of providing cellular service rather than decrease them.[174]

BellSouth relates that despite the fact that the CPUC has been examining the issue of switch-based resale for years, no reseller has presented a proposal of how it could be generically implemented.[175] Resellers have yet to provide any explicit plans that demonstrate the technical or economic viability of switch-based resale.[176] McCaw points out that the connection of a reseller's switch to that of a carrier would "degrade" the quality of cellular service for resellers' customers by "forcing calls to be routed through an additional transmission link" and "depriv[ing] customers of "existing roaming capabilities."[177]

Bruce M. Owen, an economist, studied the issue of carrier-reseller connection on behalf of McCaw.[178] Owen attacked head-on the notion put forth by NCRA that cellular carriers control essential facilities by stating that "cellular carriers are already required to offer nonswitched interconnection to resellers."[179] Owen also determined that "there is no persuasive evidence" that cellular carriers have

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174 GTE at 46-47.

175 BellSouth at 18, n.35.

176 AirTouch at 24; BellSouth at 19; McCaw at 15.

177 McCaw at 15.

178 See Owen Declaration, supra n.10.

179 Owen Declaration at 37.

an incentive to limit reseller competition. In fact, Owen stated that cellular carriers have the opposite incentive--to ensure that resale is conducted in the most cost-efficient manner.

Nor did commenters find credible the claims of resellers[180] that an alleged decline in resale in some markets indicates that the cellular industry is not competitive. Owen stated that because cellular carriers stand as wholesale providers of cellular service in relation to resellers' retail business, the market share of resellers "has no particular implications for wholesale competition or for consumer welfare. It is the degree of competition among wholesalers that is relevant . . . ."[181] Owen explained that when wholesale suppliers use dual-distribution systems, complaints from independent resellers are common. According to Owen, such complaints are not evidence of anticompetitive behavior;[182] they may simply be efforts by resellers to obtain services "at an artificially low price."[183] In addition, as GTE pointed out in its comments in response to the CPUC's Petition to the Commission requesting authority to

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[180] See, e.g., NCRA at 11.

[181] Owen Declaration at 37.

[182] Id. at 38 (citing to the antitrust treatise of Areeda and Hovenkamp).

[183] Id. at 38.